IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.03.2019
Judgment Pronounced on : 01.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3104 of 2011
and
MP.No.1 of 2011

M/s. Bajaj Allianz General Insurance Co. Ltd.,
D.No. 11, People's Park,
3rd Floor, Government Arts College Road,
Coimbatore. ... Appellant/2nd Respondent

Versus

1. M. Ammasi ..1st Respondent/Petitioner

2. P. Manikandan ..2nd Respondent/1st Respondent

3. The Managing Director,
Tamil Nadu State Transport Co. Ltd.,
Ramakrishna Road, Salem-7. ...3rd Respondent/3rd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 08.12.2010 made in MCOP.No.678 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court, Namakkal.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.Ma.P.Thangavel (for R1)

: Mr.P.Jagadeeswaran (for R3)

: No Appearance - R2

JUDGMENT

The Insurance Company is the appellant herein, challenging the award of compensation on the ground of liability.

2.The case of the claimant/first respondent herein is that on 27.03.2005 at about 7.10 am., near Konnaiyar bridge, when the claimant was travelling in a Bajaj Tempo Auto bearing Registration No.TN-34-C-8445 along with his goods, from Tiruchengodu to Rasipuram main road, at the time, a Bus bearing

Registration No.TN-27-1290, which was driven by its driver in a rash and negligent manner came from the opposite direction, and dashed against the claimant's vehicle. Due to the impact, the claimant sustained multiple grievous injuries and compound fracture on his left hand and other injuries all over the body.

2.1.Immediately, the claimant was admitted to the Government Hospital, Rasipuram, where, he took first aid treatment. Thereafter, he was shifted to Mohan Kumarangalam Government Hospital, Salem for further treatment. The claimant was thereafter admitted to Surya Hospital, Rasipuram for advance treatment, for which, he had spent a huge sum of Rs.50,000/-.

2.2.The second respondent herein is the owner of the Bajaj Tempo Auto vehicle and the appellant herein is the insurer of said vehicle and the third respondent herein is the owner of the offending vehicle. Hence, all the respondents are liable to pay the compensation to the claimant. A case has been registered before Elachipyalayam Police Station in Crime No.66 of 2005 under Sections 279, 337 of IPC. The claimant filed a claim petition in MCOP.No.678 of 2005, claiming a sum of Rs.2,00,000/- as compensation.

3.The Insurance Company filed a counter statement stating that the claimant travelled as an unauthorized passenger, more than its seating capacity in the said vehicle, and it is a violation of policy's terms and condition. They denied all the averments made in the claim petition filed by the claimant and pleaded that the Insurance company cannot be fastened with the liability.

4.In support of the claim petition, the claimant examined himself as PW.1 besides examining one Dr.Kathiraven as PW.2 and documents Exs.P1 to P11 were marked. On behalf of the respondents RW.1 to RW.3 were examined and document Ex.R1/Policy copy was marked. Besides that on behalf of the Trial Court Ex.X1/ authorization letter issued by the Regional Transport Officer to permit him to render evidence to RW.3, Ex.X2/ELCOT record true copy and Ex.X3/”B”-record true copy were marked.

5.Based on the oral and documentary evidence, the Tribunal has come to the conclusion that the injured claimant/PW.1 travelled in the Bajaj Tempo Auto and another vehicle involved in the said accident is the Transport Corporation Bus. Ex.P1/First Information Report was lodged by the Driver of the Transport Corporation, wherein, he stated that while the Transport Corporation bus was proceeding near Konnaiyar bridge, from Tiruchengodu to Rasipuram road, at the time, the said Bajaj tempo auto came in the opposite direction, dashed on the rear right side of the bus, thereby, the driver in the Bajaj tempo got injured. PW.1/claimant has stated that he travelled in the said auto, with the consent of the owner of the goods and accompanied the goods. Due to the rash and negligent driving on the part of driving of both drivers, the accident has taken place and also taking into consideration, the evidence of PW.1 and RW.1 to RW.3 and also, after cross examination comparing the evidence of PW.1 and RW.1 to RW.3 with the evidence of Ex.P3/ Motor vehicle Inspection report, the Tribunal held that on the right rear side portion of the bus got damaged and scratches, while the front side of the Bajaj tempo auto had damaged. Thereafter, it held that, at the time of the accident, the driver of the Transport Corporation had driven the bus on the left of side of the road, by giving necessary space to the opposite vehicle i.e., Bajaj tempo auto. On re-appreciation of the evidence coupled with the evidence Ex.P1 and Ex.P3, this Court is of the considered view that the finding rendered by the Tribunal with regard to composite negligence does not warrant any interference. Accordingly, the composite negligence of 50 : 50 fixed by the Tribunal is hereby confirmed.

6.The learned counsel appearing for the Insurance company would contend that at the time of accident the injured PW.1/claimant has travelled in the vehicle as unauthorized occupant. Being the factual ground of the case, it is a violation of policy and condition. The next contention raised by him is that, at the time of accident, the driver of the auto did not possess any necessary badge endorsement to drive the above said vehicle and the same amounts to violation of policy condition. Hence, the Insurance company has to be exonerated from any liability.

7.On the point of quantum, I perused the records and heard the learned counsel appearing for the respective parties. This Court perused the evidence of PW.2/Dr.Kathiraven, who had issued Ex.P6/ treatment book issued by the Government Hospital, Salem, Ex.P7/discharge summary and Ex.P9/medical bills, Ex.10/X-ray, coupled with Ex.P11/ disability certificate fixing disability at 10%. The notional income of the claimant was fixed at Rs.3,000/- per month for the period of six months, which is arrived at Rs.18,000/- (Rs.3,000 x 6) towards loss of income during the period of treatment. For disability of 10%, a sum of Rs.10,000/- was granted, which would be fair and reasonable and a sum of Rs.20,000/- towards pain and suffering; a sum of Rs.1,000/- towards Transportation; a sum of Rs.2,000/- towards Nutrition was awarded. As per the medical bills under Ex.P9, a sum of Rs.8891/- was awarded, as it was incurred by the claimant. In all, a total sum of Rs.59,891/- (wrongly quoted by the Tribunal as Rs.64,891/-) was arrived as compensation and it was rounded off to Rs.59,900/-. A typographical error had crept in, while calculating the amount of total compensation.

8.This Court has given its anxious consideration to the above said contentions raised by the Insurance company. It is seen that RW.2/Legal adviser on behalf of the Insurance company, in his evidence relied upon Ex.R1/ policy copy, projected that the claimant travelled in the auto as unauthorized occupant, at the time of accident. On the other hand, before the Tribunal, Ex.X1/entry slip issued by the RTO, Thiruchengodu to RW.3, and the deposition of RW.3 shows that the driver of the Auto had Driving Licence for the period from 02.06.2005 to 01.06.2025 and it has been registered for commercial light motor vehicle (LMV) with necessary badge endorsement. In support of the said evidence, Exs.X2 and X3 were also marked.

9.During the cross examination, RW.3 has stated that the driver of the Auto viz., the second respondent was having learner license registration (L.L.R) with effect from 08.02.2005 to 20.06.2005. Hence, on the date of accident 27.03.2005, he is having a valid L.L.R for LMV vehicles and the vehicle bearing Registration No.TN-34-C-8445 is a LMV vehicle and the same is commercial vehicle, which was driven by him. In the light of the decision rendered by the Honourable Supreme Court in [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] reported in AIR 2017 SC 3668, wherein, it has been held that a person who has a valid license to drive a light motor vehicle can drive a vehicle of same category and obtaining endorsement or badge is not necessary, the appellant/Insurance Company cannot be exonerated from its liability on the ground that the driver of the insured vehicle did not obtain endorsement or badge.

10.As per the evidence of RW.3/RTO Officer coupled with Ex.X3, this Court finds that on the date of the accident, the driver of the auto has possessed valid L.L.R to drive the LMV vehicle and the said vehicle is also a commercial vehicle. Subsequently, it is also seen from the evidence that the driver was having driving license to drive the LMV vehicles in between the year from 2005 to 2006. Hence, at the time of accident the driver possessed valid L.L.R to drive the said vehicle. In this regard, the finding of the Tribunal that the compensation amount has to be paid as equal share by the appellant/Insurance company and the third respondent herein/Transport Corporation, cannot be found fault and the same is hereby confirmed.

11.That apart, in view of the decision rendered by the Honourable Supreme Court in National Insurance Co. Ltd., Vs. Swaran Singh & Ors., reported in 2004(1) Supreme 243, even though there is a violation of the conditions of the policy, yet the insurance company is liable to pay the compensation to the victim and the same could be recovered from the owner of the vehicle. The relevant portion of the Judgment is extracted hereunder:-

> "48. Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof."

12.Hence, this Court holds that the award passed by the Tribunal, holding the Insurance company has to be paid the compensation to the claimant does not warrant any interference, at this appellate stage. Hence, the appeal is liable to be dismissed.

13.In the result,

(i) the appeal filed by the Insurance Company is dismissed by confirming the award dated 08.12.2010 passed by the Motor Accidents Claims Tribunal, Fast Track Court, Namakkal.

(ii) the appellant/Insurance Company is directed to deposit their award share amount as determined before the Tribunal, along with costs and interest at the rate of 7.5% per annum, within a period of eight weeks from the date of receipt of a copy of the Judgment.

(iii) On such deposit being made, it is open to the claimant/first respondent herein to withdraw the entire award amount by making necessary application before the Tribunal.

(iv) There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

klt

To

1.The Motor Accident Claims Tribunal, Fast Track Court, Namakkal.

2.The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 CC to Mr.S.Arunkumar, Advocate sr 54606.
+1 CC to Mr.Ma.P.Thangavel, Advocate sr 54660.

C.M.A.No.3104 of 2011
and
MP.No.1 of 2011

SSD(CO)
SP(12/03/2020)